NOMINATION

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

TONY E. GALLEGOS, OF CALIFORNIA, TO BE A MEMBER OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

MARCH 29, 1982

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NOMINATIONS

MONDAY, MARCH 29, 1982

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 11:05 a.m., in room 4232, Dirksen Senate Office Building, Senator Orrin G. Hatch (chairman of the committee) presiding.

Present: Senator Hatch.

The CHAIRMAN. We will call the committee to order.

We are going to turn to the nomination of Mr. Tony Gallegos, who has been nominated to serve on the Equal Employment Opportunity Commission, the agency Congress established to investigate and remedy employment discrimination in this country. This committee is committed to the national goal of eliminating discrimination and, as such, will do everything possible to strengthen the EEOC.

Mr. Gallegos, I understand that your colleague Cathy Shattuck, who President Reagan recently appointed, has moved quickly to clear up the financial and management problems this committee and the GAO identified several months ago. It is this kind of leadership that is emerging from this administration which will demonstrate its commitment to civil rights.

Your nomination is another indication of the President's interest in moving the EEOC forward. You have a long, rich history of working to improve conditions for minorities. This, coupled with your knowledge of the business community, will bring a balanced perspective to the agency.

Mr. Gallegos, we will take your statment.

STATEMENT OF TONY GALLEGOS, NOMINEE TO BE A MEMBER, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. GALLEGOS. Mr. Chairman and distinguished members of the committee, I am pleased and honored that President Reagan has nominated me, subject to the advice and consent of the U.S. Senate, to be a member of the Equal Employment Opportunity Commission.

I would like to acknowledge and publicly thank all the people and organizations that have supported my nomination, especially the American G.I. Forum of the United States and its founder, former Ambassador to the United Nations, Dr. Hector P. Garcia, a legend in our time; the Mexican-American Legal Defense and Educational Fund and its president and general counsel, Vilma S. Martinez; and the Mexican-American Opportunity Foundation, that

has affected the future employment status of Hispanics and its founder and director, Dionicio Morales.

I believe I may have a unique contribution to make to the Commission. As a citizen and also a minority of this country, I have spent most of my life working at virtually every level of National, State, and local organizations concerned with community problems, especially those related to minority concerns. I have had the honor of holding the highest office of many of the largest National, State, and local Hispanic organizations to promote and enhance the socio-economic betterment of minorities.

Along with this experience, I have spent a number of years with one of the largest corporations in America, including a number of managerial positions, not the least of which has been more than 6 years dealing with the problems of equal employment opportunities on a day-by-day, hands-on basis.

The operation of Government and the delivery of services to the American public is presently undergoing serious structural and procedural changes, and in order to contribute significantly, a commissioner should be aware of events that relate or impact on EEOC from both sides of the table. This awareness and knowledge should be tempered with an ability and flexibility to have experienced both sides of fair employment enforcement responsibilities.

We are now at the juncture where the Commission must show that it is capable of rethinking, reevaluating, reorganizing, and implementing more unique and innovative procedures that will assure a more expeditious resolution of charges of discrimination while concerning itself with the rights and protection of all parties. The business-as-usual syndrome must stop. All members of the Commission share the basic and serious responsibility of overseeing the effective administration of the EEO laws that the Commission administers and enforces.

I pledge to pursue a course committed to diligent, plain hard work. The structural and organizational concept of a commission in Government relies on the theory that each member can present a different input into the central decisionmaking process in furthering the mission of the Government entity while respecting its leadership as it follows the democratic process.

As a member of a governmental body of public trust, the commissioner must have the ability to take a leading role in eliminating illegal discrimination in this country. Contemporary times and pressures demand that commission members be able to contribute significantly to innovative ideas while reorganizing established, existing concepts and structures.

As a matter of principle and commitment, I have spent a great deal of my life devoted to the principles of eliminating discrimination in our country, and I again pledge to use my managerial experience, talents, and unique perspective to fill my responsibilities as a member of the Equal Employment Opportunity Commission.

Thank you.

[The biographical sketch of Mr. Gallegos follows:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Gallegos (LAST) Tony (FIRST) _____ (OTHER)

Position to which nominated: Equal Employment Opportunity Commissioner Date of nomination: 2/4/82

Date of birth: 13 (DAY) Feb. (MONTH) 1924 (YEAR) Place of birth: Montrose, Colorado

Marital status: Married Full name of spouse: Carmen Gallegos

Name and ages of children: Michael Gallegos - 30 years

Lori Gallegos - 24 years

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Woodberry University	1946-48		
Bisttram School of Fine Arts	1948-51	B.A.	1951
L.A. Trade-Technical College	1951-52		

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Resolutions from California State Senate and Assembly for significant achievements and contributions to the Mexican-American Community; Resolutions from Los Angeles City Council and County Supervisors for community work; Community Recognition Award from TV channel 7, L.A.; Contributions to American Veterans Commendation from Senator Hayakawa.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
The American G.I. Forum	National Chairman	1972
Mexican-American Opportunity Foundation (MAOF)	President	1963
Personnel Management Assoc. of Aztlan (PMAA)	None	
Jobs for Progress (SER) National Board of Directors	Vice Chairman	1974
Mexican-American National Organization (MANO)	Vice President	1964

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

FROM	TO	NAME OF EMPLOYER	TYPE OF WORK
2/47	3/52	Pacific Telephone & Telegraph Company 434 S. Grand, L.A., CA	Service Mechanic
3/52	Present	Douglas Aircraft Company Torrance Facility	Manager, Equal Opportunity Programs

Previous assignments with other components of the McDonnell Douglas Corporation were: Assistant to the Corporate Director-West, EOP

Executive Assistant to the President

Corporate Art Director

Graphic Communications Deputy Manager

Advertising Department Deputy Manager

Product Development Department

Marketing Communications

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

Former Advisory Committee member for Civil Service Commissioner Robert Hampton.

Former member of the Board of Economic Development Program for County of Los Angeles.

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Was California Co-Chairman of Democrats and Independents for Reagan.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Will retire from McDonnell Douglas Corporation

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No plans at this time

3. Has a commitment been made to you for employment after you leave Federal service?

No

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

Lobbied for legislation to include SER Jobs for Progress in the CETA legislation bills. As National Chairman of the American G.I. Forum, I lobbied for any legislation that was beneficial to American Veterans.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

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The CHAIRMAN. Thank you, Mr. Gallegos.

We will submit a statement of Senator Cranston in support of you, and we will also submit a statement of Senator Thomas F. Eagleton with some questions for you to answer in writing, if you will.

[The statements and questions with responses referred to above follow:]

STATEMENT OF SENATOR ALAN CRANSTON

NOMINATION

OF

TONY E. GALLEGOS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

I am pleased to support the nomination of my constituent, Tony W. Gallegos, to serve as a member of the Equal Employment Opportunity Commission.

Mr. Gallegos comes before this Committee with a long and extensive record of involvement in Hispanic and community activities within the State of California and on the national level. As a former National Chairman of the American G.I. Forum, he has also been deeply involved in issues relating to the needs of veterans. Additionally, he has served as Vice Chairman of the National Board of Directors of Jobs for Progress (Operation SER) and was a member of the Board of Economic Development for Los Angeles County.

Mr. Gallegos has also had direct experience in developing and administering an EEO program for a large corporation. He is currently the manager of EEO programs for McDonnell Douglas Corporation, having been employed by McDonnell Douglas for over thirty years.

Mr. Gallego's combination of direct experience in the EEO field, and his extensive community and civic activities relating to human needs, provides him with the background and experience to carry out the duties and responsibilities of an Equal Employment Opportunities Commissioner. I recommend this nominee to the Committee and urge your prompt and favorable action on his nomination.

STATEMENT OF SENATOR THOMAS F. EAGLETON

Mr. Chairman, as you know, in the first seven years of its existence the EEOC, whose mandate was to eliminate employment discrimination, had no enforcement authority. It was not until 1972 that the EEOC was empowered to litigate to achieve compliance with Title VII and gained concurrent authority with the Department of Justice to initiate pattern and practice suits. These two new authorities were absolutely essential to mount an attack on every aspect of employment discrimination in the country.

It is my view that the authority to initiate pattern and practice law suits was the most important power the EEOC acquired under the 1972 amendments. Individual case-by-case litigation is simply inadequate to eliminate unlawful discriminatory patterns, and even class action suits are often limited to a very small percentage of workers employed by corporations with operating facilities in many parts of the country. It is my view that the very nature of employment discrimination clearly indicates the need for an attack on patterns of discrimination.

In a prior meeting with Mr. Gallegos, I raised the question, in connection with his years of service as manager of equal opportunity programs at the Douglas Aircraft Company Torrance Facility, as to whether any pattern or practice suits had been filed against McDonnell-Douglas. Mr. Gallegos appeared to have no knowledge of what pattern or practice suits were. I am deeply concerned that this nominee demonstrated such a lack of understanding of such an important enforcement tool for attacking discriminatory employment systems of large enterprises.

Mr. Chairman, I have a number of written questions to submit to Mr. Gallegos for responses in writing.

# # #

1) As an individual who has labored on behalf of Hispanic civil rights matters, would you consider employment discrimination as a major obstacle that the federal government should focus its resources to combat? Should this be a budget priority for this Administration and Congress?

2) Having been an advocate as well as having worked in the private sector on equal employment opportunity matters, do you consider the EEOC effectively and adequately equipped to deal with problems of employment discrimination? Do you believe that employers can effectively comply voluntarily with equal employment opportunity objectives? If so, please provide examples.

3) Having worked on both sides of the issue of equal employment opportunity, what do you consider to be the most pressing issues confronting the EEOC and its efforts to address employment discrimination?

4) Having worked on both sides of the issue of equal employment opportunity, do you regard providing back pay as an effective remedy to dealing with past discrimination? Do you regard the use of back pay as providing an incentive to employers to more effectively comply with equal employment opportunity statutes and guidelines?

5) Based on your professional experiences as an EEO manager in the private sector, what are your views on sexual harassment matters? Do you believe that sexual harassment is pervasive in the work place? Do you agree with EEOC guidelines aimed at addressing this issue? Would you have any suggestions on ways to improve dealing with sexual harassment cases?

6) Many organizations in the civil rights movement have expressed concern that the Department of Justice has attempted to enter into the policy-making arena of the EEOC in equal employment opportunity issues. They contend that EEOC has jurisdiction in such matters and that Justice is infringing on this jurisdiction. How would you view efforts by other civil rights agencies in the federal government, to enter into the domain of the EEOC? Woule you be concerned about maintaining agency independence and integrity?

MAR 3 0 1982

Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human Resources
United States Senate
Washington, D. C. 20510

Dear Chairman Hatch:

Attached are my responses to the written questions submitted to me at the March 29, 1982, conformation hearing held on my nomination for the Equal Employment Opportunity Commission.

Sincerely,

Tony E. Gallegos by JAS/HC

Tony E. Gallegos

Attachment

1) As an individual who has labored on behalf of Hispanic civil rights matters, would you consider employment discrimination as a major obstacle that the federal government should focus its resources to combat? Should this be a budget priority for this Administration and Congress?

Yes. I believe that employment discrimination continues to be a major problem in our society and that its eradication will continue to require a priority claim on the Federal government's financial and personnel resources for a long period of time to come.

2) Having been an advocate as well as having worked in the private sector on equal employment opportunity matters, do you consider the EEOC effectively and adequately equipped to deal with problems of employment discrimination? Do you believe that employers can effectively comply voluntarily with equal employment opportunity objectives? If so, please provide examples.

As I stated at the Committee's confirmation hearing on Monday, I especially hope to work with the other Commissioners to implement a more effective Commission charge-resolution procedure. There are other problems at the Commission and I, of course, will support all program changes that seek to improve EEOC's handling of its responsibilities during my tenure on the Commission.

While I believe that a number of employers comply voluntarily with the equal employment opportunity objectives set out in the federal EEO laws, I also believe that there are a number of employers whose work forces do not reflect compliance with these objectives. This is why these laws and agencies, like EEOC, continue to be needed.

3) Having worked on both sides of the issue of equal employment opportunity, what do you consider to be the most pressing issues confronting the EEOC and its efforts to address employment discrimination?

I believe that the Commission is now at the juncture where it must show that it is capable of rethinking, re-evaluating, reorganizing and implementing unique and innovative procedures to more expeditiously resolve employment discrimination charges while protecting the rights of all parties.

4) Having worked on both sides of the issue of equal employment opportunity, do you regard providing back pay as an effective remedy to dealing with past discrimination? Do you regard the use of back pay as providing an incentive to employers to more effectively comply with equal employment opportunity statutes and guidelines?

I believe that the possibility of a back pay award to a victim of employment discrimination, where the evidence supports the fact that the victim incurred a loss of wages because of employment discrimination, is an effective remedy for a victim of employment discrimination and a effective incentive for an employer to comply with an EEO law's requirements.

5) Based on your professional experiences as an EEO manager in the private sector, what are your views on sexual harassment matters? Do you believe that sexual harassment is pervasive in the work place? Do you agree with EEOC guidelines aimed at addressing this issue? Would you have any suggestions on ways to improve dealing with sexual harassment cases?

The Commission's present Guidelines on Sexual Harassment address an important issue. They are the official policy of the Commission, and have been noted favorably by at least two Federal district courts as correct interpretations of Title VII. I intend, as Commissioner, to follow the policies set forth by the Commission in these Guidelines.

While I know that sexual harassment frequently occurs in the work place, I do not have statistical knowledge of the extent this conduct pervades this country's work places.

I do not have any suggestions now on ways for the Commission to improve its dealing with its sexual harassment cases since, as a private citizen, I have not been privy to the discussions and policy determinations that underlie the Commission's present administrative and enforcement decisions in this area.

6) Many organizations in the civil rights movement have expressed concern that the Department of Justice has attempted to enter into the policy-making arena of the EEOC in equal employment opportunity issues. They contend that EEOC has jurisdiction in such matters and that Justice is infringing on this jurisdiction. How would you view efforts by other civil rights agencies in the federal government to enter into the domain of the EEOC? Would you be concerned about maintaining agency independence and integrity?

The continuation of the responsibility given to EEOC in Reorganization Plan No. 1 of 1978 and Executive Order 12067 to provide leadership and coordination to Federal agencies administering equal employment opportunity laws was affirmed last summer by the present Administration. The exchange of letters between EEOC's Acting Chairman and OMB's Director for Information and Regulatory Affairs on this subject made clear that a delegation of these responsibilities to the Department of Justice is not contemplated by the present Administration. This position has my full support.

The CHAIRMAN. Let me just ask you a few questions.

As a professional working in the private sector and having had to deal with the EEOC, what ideas do you have to make that agency an effective one?

Mr. GALLEGOS. I think the complaint area; I think that the whole area of receiving complaints could be strengthened in the area of training of the people in the field. I have encountered over the years working with EEOC, a lot of repetitious questioning, a length of time which eventually costs money and resources. I think that is one area, some deep training in that area.

The CHAIRMAN. The legislative history of the 1978 amendments to the Age Discrimination in Employment Act made it clear that the new law would not impose liability retroactively on employers who had involuntarily retired employees prior to age 65 under a bona fide retirement plan. The EEOC nonetheless has argued in a number of court cases that the amendment prohibiting involuntary retirement should be retroactively applied. Its position has been universally rejected by the Federal court of appeals in the *Sikora* v. *American Can Co.* case. Do you plan to continue arguing this position?

Mr. GALLEGOS. No, Mr. Chairman. I think our resources would probably be applied to more critical areas.

The CHAIRMAN. The uniform guidelines for employee selection procedures regulate the professional practices of psychologists in the preparation of tests and other selection devices. These guidelines establish standards for the preparation of tests, even though they conflict with several established principles of the psychological profession. Moreover, several court decisions have held that where the standards of the psychological profession conflict with the guidelines, the former should prevail.

Do you feel it is proper for the EEOC, through its guidelines, to establish technical standards for professional and industrial psychologists?

Mr. GALLEGOS. Well, as I understand it, I think the guidelines govern the evidence of validity and where there has been discrimination and the selection procedure shows adverse impact. I think that if there is a conflict in the guidelines with a profession, that some professional discussion with them should be carried out and if there is still a problem, I think that ought to be resolved by a change in the guidelines.

The CHAIRMAN. Thank you. Those are the only questions really I had for you. I am familiar with your background and compliment you for this opportunity, and of course believe you will do an excellent job in this area.

Mr. GALLEGOS. Thank you, Mr. Chairman.

The CHAIRMAN. I am very happy to support your nomination.

We have one other witness with us today to testify for you. Her name is Antonia Hernandez, associate counsel of the Mexican-American Legal Defense Fund.

Antonia, we are happy to have you with us today and we will look forward to taking your testimony at this time.

STATEMENT OF ANTONIA HERNANDEZ, ASSOCIATE COUNSEL, MEXICAN-AMERICAN LEGAL DEFENSE & EDUCATION FUND

Ms. HERNANDEZ. Senator, it is indeed a pleasure and an honor to come and testify before your committee on something we definitely agree on. [Laughter.]

The CHAIRMAN. Thank you. I think we will find some more through the years, an awful lot more.

Ms. HERNANDEZ. We are going to keep looking.

The CHAIRMAN. Let's keep doing that.

Ms. HERNANDEZ. It is indeed a pleasure, and I am pleased to appear before the committee on behalf of the Mexican-American Legal Defense and Education Fund to support the nomination of Mr. Tony Gallegos for Commissioner of the Equal Employment Opportunity Commission.

Mr. Gallegos is well known and respected by MALDEF. He has been supportive of our organization's goals and efforts, and has been personally involved in many other Hispanic organizations seeking to enhance opportunities for Hispanic-Americans as well as for American veterans. We believe that Mr. Gallegos will be acutely sensitive, not only to the particular EEO needs of Hispanics but also to those of all individuals.

Professionally, Mr. Gallegos is highly qualified for the EEOC post. During his 30 years of employment with the McDonnell Douglas Corp., he has had extensive experience in the field of EEO, in management, and in policy development and implementation. His work experience, together with the leadership capabilities he has exhibited in his many civil activities, provide Mr. Gallegos with a strong foundation which will enable him to successfully fill the duties of Commissioner of the EEOC.

As the chief agency charged with the enforcement of title 7 and other statutes prohibiting discrimination in employment, the EEOC has been vital to the Hispanic community in the efforts to attain fair treatment in the workplace. MALDEF has worked closely with the Commission in the past to insure that Hispanic problems are adequately addressed, and we hope to continue this working relationship in the future.

It is unfortunate that EEOC has been in a state of flux and largely inactive for the last several months due to absence of a quorum of commissioners. It is important for key positions within EEOC to be filled by qualified and sensitive individuals so that the Commission can once again take a strong leadership role in the enforcement and implementation of equal employment opportunity policy. We are optimistic that the appointment of Mr. Gallegos will be one step closer to achieving that goal.

In conclusion, MALDEF is confident that Tony Gallegos will serve the Commission well and that he is committed to carrying out the mandate of EEOC. We look forward to working with him on issues of vital concern to Hispanics, women, and other minorities.

Thank you for giving us this opportunity.

The CHAIRMAN. Thank you, Ms. Hernandez.

Mr. Gallegos, we are really happy to have had you here. We will recommend you strongly for this position. I feel like everything will work out just fine. Thank you for being willing to serve.

With that we will recess this hearing.

[Whereupon, at 11:35 a.m., the committee recessed, to reconvene at the call of the Chair.]

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